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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Civil Revision No. 5905 of 2006**
Date of decision: 17.9.2007

**Asa Nand Dhingra** **...Petitioner**

**Versus**

**Smt. Rajni Gupta** **Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Avnish Mittal, Advocate for the petitioner.

Mr. A.S.Chadha, Advocate with
Mr. Sumeet Goel, Advocate and Mr. S.S.Walia, Advocate
for the respondent.

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**RAJESH BINDAL, J.**

In the present petition, defendant has sought to challenge order dated October 18, 2006 passed by the Civil Judge (Senior Division), Faridabad whereby the application filed by the petitioner/defendant under Order 14 Rule 1 and 2 of the Code of Civil Procedure (for short "the Code") for amendment of issue and for framing of additional issues was dismissed.

2. Briefly the facts, are that the petitioner agreed to sell the property vide agreement entered into on October 15, 2004. On failure of the petitioner to execute the sale deed, the respondent filed a suit for specific performance on December 24, 2005. On the pleadings of the parties, learned trial Court framed the following issues:-

"1. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 15.10.2004 in respect of the suit land? OPP

2. Whether the plaintiff was always ready and still ready to perform his part of contract, if so that effect? OPP

3. Whether the suit is bad on account of non-joinder of necessary parties?

4. Relief."

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3. However, dissatisfied with the issues framed the petitioner/defendant moved an application under Order 14 rule 1 and 2 of the Code for framing the following additional issues:-

> "1. Whether the suit property is Hindu Coparcenary property and is not alienable as alleged?
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> 2. Whether the defendant has only 1/7th share in the suit property as alleged?
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> 3. Whether the plaintiff is estopped from filing the present suit as alleged?
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> 4. Whether the impugned agreement has become impossible for performance as alleged and the offer of refund of Rs. 4 lacs to the plaintiff is justified in the circumstances of the case?

4. It is this application, which was rejected by the learned trial Court vide order dated October 18, 2006, which is impugned in the present petition.

5. Learned counsel for the petitioner-defendant submitted that the additional issues sought to be raised by him in the application are proper and necessary for the purpose of decision of the lis between the parties. Once it is held that the property is coparcenary property and could not possibly be alienated by the petitioner, the agreement entered into by him would become impossible of performance and accordingly, no decree could be passed against him. He submitted that in the written statement filed by him, a plea regarding family settlement dated December 21, 1998 was taken and even in order passed by the trial Court in a suit filed by the petitioner, alongwith three other plaintiffs therein against other co-owners, the same was decreed holding them to be the co-owners in the property. He has specifically referred to the words written in the order passed by the learned Civil Judge (Junior Division) holding the property to be ancestral. He submitted that proper issues arising out of the pleadings of the parties having not been framed by the Court below, the petitioner is well within his right to move the application and claim the issues which arise for

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determination by the Court in the lis between the parties.

6. On the other hand, learned counsel for the respondent-plaintiff submitted that application is clearly malafide and is nothing else but abuse of process of Court. Object is only to delay the proceedings. On the same date, another application was filed by Om Parkash and Jai Parkash sons of the petitioner under Order 1 Rule 10 of the Code for impleading them as party in the suit claiming that suit property is Joint Hindu Family property and the present petitioner is merely a coparcener therein and was having only 1/7$^{th}$ share. The claim made by the sons of the petitioner was rejected by the trial Court and even Civil Revision No. 6301 of 2006 filed by sons of the petitioner, challenging that order of the trial court, was dismissed by this Court vide order dated July 16, 2007.

7. Learned counsel further referred to the pleadings of the parties in the suit for partition which do not depict that the property in dispute is an ancestral or Joint Hindu Family property as the same was purchased by the petitioner alongwith other persons vide sale deed dated July 31, 1974. He further submitted that efforts of the petitioner is only to abuse the process of Court so as to defeat just claim of the respondent/plaintiff for specific performance of the agreement to sell entered into by the petitioner with open eyes. He further submitted that though in the written statement filed by the petitioner, a reference has been made to the family settlement dated December 17, 1998, however, in the suit for partition filed by him alongwith other co-owners a reference has been made to the partition deed dated April 19, 2004 and it is admitted therein that the property in question was in co-ownership with the defendants in that suit. Still further a family settlement dated September 6, 2003 has been placed on record of which reference is there in the written statement filed. Summing up his contention, learned counsel submitted that once the application filed by the sons of the petitioner for being impleaded as party in the suit raising the same very issue of the property being Joint Hindu Family property, having been rejected upto this Court, there is no merit in the claim made by the petitioner in the present petition. He further referred to the impugned order where also it is recorded that vide separate order application under Order 1 Rule 10 of

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the Code was dismissed with costs.

8. He relied upon the judgments in **Panne Khushali and another Vs. Jeewanlal Mathoo Khatik and another AIR 1976 Madhya Pradesh 148, Krishan Lal and others Vs. Tek Chand and others AIR 1987 Punjab and Haryana 197, Smt. Tej Kaur and others Vs. Jeet Singh and others AIR 1998 Rajasthan 201 and Kasturi Vs. Lyyamperumal & others JT 2005(4) SC 565.**

9. Having heard learned counsel for the parties and perusing the material placed on record by them, I am of the considered opinion that petition filed by the petitioner/defendant is devoid of any merit. The primary issue for consideration by the Court in the suit is as to whether the agreement to sell entered into by the petitioner with respondent is enforceable or not and as to whether the relief prayed for by the respondent-plaintiff is admissible in law or not? While considering the challenge to the order passed by the learned court below rejecting the application under Order 1 Rule 10 of the Code filed by the sons of the petitioner, this Court observed as under:-

> "It has been further held that a stranger to the contract even is not a proper party. In this regard, it has been observed that the question that is to decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Even in ***Krishan Lal's case***(supra), a Division Bench of this Court has held that in a suit for specific performance of a contract of sale, a person, who is not party to agreement to sell and is claiming to be joint owner of the suit property, is not entitled to be impleaded as defendant, as he is neither necessary nor proper party. The judgment cited by learned counsel for the

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> petitioners is not applicable to the facts and circumstances of this case. In the said judgment, the relief of specific performance was declined in a suit for specific performance filed against the Karta of the HUF, who entered into agreement without making the other coparcener as party to the suit. In that judgment, it was not the controversy that a stranger to the contract was making a claim adverse to the title of the vendor-defendant contending that he is co-owner of the contracted property. It is also well settled, as has been held by a Division Bench of this Court in ***Jujhar Singh*** v. ***Giani Talok Singh,*** 1986 PLJ 346, that no injunction can be granted to a coparcener for restraining the Karta of the Joint Hindu Family property from alienating the coparcenary property. The coparcener has right only to challenge the alienation after execution of the sale deed by the Karta, on the ground that alienation was not for legal necessity or for the benefit of the estate."

10. The case in hand is a suit for specific performance of agreement to sell. In the process, the court is not deciding the title of the property in question. Once the claim made by the so called coparceners, asserting the property in dispute to be Joint Hindu Family property for impleading them as parties in the suit, has already been dismissed upto this Court, I do not find any justification in the claim made by the petitioner-defendant to accept his prayer for framing of additional issues raising the same very question, which will only result in converting the suit for specific performance into a suit for title, as rightly observed by the trial Court. The effort of the petitioner is only to delay the proceedings which is fortified from the fact that while dismissing the application by passing the impugned order on October 18, 2006, case was fixed for cross examination of PW1, however, inspite of the fact that there was no interim order passed by this Court in the earlier proceedings, the petitioner did not cross examine PW-1 accordingly, the trial court stopped the petitioner from cross examining the witness produced by the respondent-plaintiff. The petitioner

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had to approach this Court by filing Civil Revision No. 2408 of 2007, in which one opportunity was granted to the petitioner for cross examination, vide order passed on May 7, 2007

11. For the reasons stated above, I do not find any merit in the present petition and the same is dismissed.

**September 17, 2007** **(Rajesh Bindal)**
**Pka** **Judge**